

LOCAL RULES
OF
PRACTICE AND PROCEDURE

United States District Court
For the Western District of Michigan

Hon. Robert Holmes Bell, Chief Judge
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LOCAL RULES OF CRIMINAL PRACTICE AND PROCEDURE

United States District Court
For The Western District of Michigan

**Effective June 1, 1998
Including Amendments through June 21, 2006**

Preface to the 1998 Edition

On March 12, 1996, the Judicial Conference approved the recommendation of the Committee on Rules of Practice and Procedure to “adopt a numbering system for local rules of court that corresponds with the relevant Federal Rules of Practice and Procedure.” The action of the Judicial Conference implements the December 1, 1995 amendments to the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, which provide that all local rules of court “must conform to any uniform numbering system prescribed by the Judicial Conference.” (See Appellate Rule 47, Bankruptcy Rules 8018 and 9029, Civil Rule 83, and Criminal Rule 57).

In addition to the substantive changes to the local rules found in the 1998 Edition, the Rules have been renumbered to comply with this mandate. The result is that, rather than being consecutively numbered, the rules have been assigned numbers which best correspond to the numbering scheme of the Federal Rules of Civil and Criminal Procedure. The renumbered Local Civil Rules and the renumbered Local Criminal Rules have been compiled as separate sets of Rules. Many of the rules familiar to practitioners under the prior edition remain substantively intact, but have had their provisions redistributed to two or more new rules within the newly-mandated numbering system.

Local Criminal Rules which do not correspond to any rule within the Federal Rules of Criminal Procedure have been assigned to Rule 57, which, in the Federal Rules of Criminal Procedure, governs the rulemaking authority of the Courts of the various districts.

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I. SCOPE, PURPOSE AND CONSTRUCTION

Local Criminal Rule 1. Authority; scope; construction

1.1 Authority - These rules are promulgated pursuant to 28 U.S.C. § 2071 and Rule 57 of the Federal Rules of Criminal Procedure. Amendment of these rules is governed by LCrR 57.3(a).

1.2 Short title - These rules may be cited and referred to individually as "W.D. Mich. LCrR _____."

1.3 Effective date - The effective date of these rules is June 1, 1998, including amendments through June 21, 2006.

1.4 Applicability - These rules apply to all criminal proceedings in this Court.

1.5 Scope - These rules govern the procedure in the United States District Court for the Western District of Michigan, govern the practice of attorneys before this Court, and supersede all previous rules promulgated by this Court or any judge thereof. Administrative orders and single-judge standing orders shall be maintained by the Clerk and made available upon request. All such orders shall be consistent with these rules and the Federal Rules of Criminal Procedure.

1.6 Construction - These rules shall be construed to achieve an orderly administration of the business of this Court and to secure the just, speedy and inexpensive determination of every action. References to statutes, regulations or rules shall be interpreted to include all revisions and amendments thereto. References to the Clerk shall be interpreted to mean the Clerk of this Court or any deputy clerk. Wherever used in these rules, the term "party," whether in the singular or plural, shall include all parties appearing in the action pro se and the attorney or attorneys of record for represented parties, where appropriate.

III. INDICTMENT AND INFORMATION

Local Criminal Rule 6. Grand juries

6.1 All grand juries are under the direct supervision of the Court. They shall convene at such times and dates as ordered by the Chief Judge.

Local Criminal Rule 9. Warrants and summonses

9.1 The original of all warrants (except search warrants) or summons issued in this District will be delivered to the U.S. Marshal's Office. If another agency desires a copy of a warrant, it may be provided by the U.S. Marshal's Office, and must be clearly marked, "copy." Each original warrant or summons is to be accompanied by a certified copy of the Indictment, Information, Complaint, Petition for Revocation of Probation, or Violation Notice, pursuant to which the warrant or summons was issued.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Local Criminal Rule 10. Arraignment

10.1 Whenever the U.S. Attorney wishes to have a defendant appear for arraignment or change of plea, a date should be obtained from the office of the responsible judge or magistrate judge. When a defendant has previously appeared before a judicial officer in this district, the date of an arraignment should not be more than seven (7) business days after the date of indictment. Thereafter, the U.S. Attorney's Office is responsible for notifying all necessary parties of the date and time for the proceeding. This includes the marshal, the person responsible for issuing a writ, if needed, the probation office, the defendant and/or defendant's attorney.

Local Criminal Rule 11. Guilty pleas

11.1 Guilty pleas in felony prosecutions - With the consent of the district judge to whom the case is assigned, a magistrate judge may preside over the taking of guilty pleas in felony matters pursuant to Fed. R. Crim. P. 11 in the circumstances below.

- (a) The magistrate judge shall carefully explain to the defendant that he or she has the right to have all proceedings, including the plea hearing, conducted by a district judge. The magistrate judge shall not proceed unless after such explanation, the defendant, defendant's attorney, and the attorney for the government all consent in writing and on the record to allow the magistrate judge to preside over the guilty-plea proceedings.
- (b) If the magistrate judge finds on the record that defendant's consent is knowingly and voluntarily given, the magistrate judge shall conduct guilty-plea proceedings, following the procedures set forth in Rule 11 of the Federal Rules of Criminal Procedure. The magistrate judge shall set forth on the record findings concerning the knowing and voluntary nature of the guilty plea, the adequacy of the factual basis for the plea, and any other relevant matter. If satisfied that all requirements of law have been met, the magistrate judge shall accept the plea and order the preparation of a presentence investigation report. The magistrate judge shall inquire concerning the existence of a plea agreement but shall not accept or reject any such agreement, but shall specifically reserve acceptance of the plea agreement for the district judge at the time of sentencing.
- (c) A magistrate judge shall not have authority to accept a conditional guilty plea or a plea of nolo contendere in a felony case.
- (d) A transcript shall be prepared of the proceeding and filed with the Clerk. Upon application of a party or sua sponte, the district judge shall conduct a de novo review of the magistrate judge's findings. In conducting such review, the district judge may reconduct all or any part of the guilty-plea hearing and may affirm, set aside, or cure any finding or proceeding before the magistrate judge. Any application for review made by a party must be in writing, must specify the portions of the findings or proceedings objected to, and must be filed and served no later than 10 days after the plea hearing, unless the time is extended by the district judge.

Local Criminal Rule 12. Motion practice

12.1 Briefs - All motions, except those made during a hearing or trial, shall be accompanied by a supporting brief. Any party opposing a written motion shall do so by filing and serving a brief conforming to these rules. All briefs filed in support of or in opposition to any motion shall contain a concise statement of the reasons in support of the party's position and shall cite all applicable federal rules of procedure, all applicable local rules, and the other authorities upon which the party relies. Briefs shall not be submitted in the form of a letter to the judge.

12.2 Supporting documents - When allegations of facts not appearing of record are relied upon in support of or in opposition to any motion, all affidavits or other documents relied upon to establish such facts shall accompany the motion. All discovery motions shall set forth verbatim, or have attached, the relevant discovery request and answer or objection.

12.3 Modification of limits - In its discretion, the Court may in a particular case shorten or enlarge any time limit or page limit established by these rules, with or without prior notice or motion.

12.4 Attempt to obtain concurrence - With respect to all motions, the moving party shall ascertain whether the motion will be opposed. In addition, in the case of all discovery motions, counsel or pro se parties involved in the discovery dispute shall confer in person or by telephone in a good-faith effort to resolve each specific discovery dispute. All motions shall affirmatively state the efforts of the moving party to comply with the obligation created by this rule.

12.5 Motion for expedited consideration - Where the relief requested by a motion may be rendered moot before the motion is briefed in accordance with the schedules set forth herein, the party shall so indicate by inserting the phrase "EXPEDITED CONSIDERATION REQUESTED," in boldface type, below the case caption, and shall identify in the motion the reason expedited consideration is necessary.

12.6 Unavailability of judge - If it appears that any matter requires immediate attention, and the judge to whom the case has been assigned, or in the usual course would be assigned, is not available, the matter shall be referred to the judge's assigned magistrate judge, who shall decide the matter if it is within the magistrate judge's jurisdiction. If the matter can only be decided by a judge, the magistrate judge shall determine whether the matter can be set for a hearing at a time when the assigned judge is available. If the matter is determined by a magistrate judge to require an immediate hearing before a judge, the case will be referred to the Chief Judge, or in the Chief Judge's absence, the next available judge by seniority for decision or reassignment to an available judicial officer. After disposition of this emergency matter, the case will be returned to the originally assigned judge.

12.7 Privacy - In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and other papers, including exhibits thereto, maintained electronically on the Court's CM/ECF system, unless otherwise ordered by the Court.

- (a) Social Security numbers - If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.
- (b) Names of minor children - If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- (c) Dates of birth - If an individual's date of birth must be included in a pleading, only the year should be used.
- (d) Financial account numbers - If financial account numbers are relevant, only the last four digits of these numbers should be used.
- (e) Home addresses - If a home address must be included, only the city and state should be listed.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may, a) file an unredacted document under seal, or b) file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

The unredacted version of the document or the reference list shall be retained by the court as part of the record. The party is required to file a redacted copy for inclusion in the public file.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties.

Local Criminal Rule 17. Service of subpoenas

17.1 All subpoenas delivered to the United States Marshal's Office for service shall allow a minimum of five (5) working days if within the Western District of Michigan, or ten (10) working days if outside the district, prior to the required appearance. A deposit in a sum deemed sufficient by the marshal to cover fees for the service to be performed shall be made in every instance in which the marshal is required to perform service. The marshal may require that any payment be in cash or certified check.

V. VENUE

Local Criminal Rule 18. Assignment of cases

18.1 All cases shall be assigned to the division in which the offense is alleged to have been committed.

VI. TRIAL

Local Criminal Rule 23. Trial date

23.1 Scheduling - Cases shall be set for trial in the manner and at the time designated by the judge before whom the cause is pending. Any case may be assigned from one judge to another with the consent of both judges to promote the efficient administration of justice or to comply with the Speedy Trial Act in another case.

23.2 Continuances - A motion for a continuance of a criminal matter shall be made only for good cause and in conjunction with the Speedy Trial Act.

23.3 Notice of Settlement - Whenever a case is settled or otherwise disposed out of Court, counsel for all parties shall assure that immediate notice is given to the Court. Should a failure to provide immediate notice result in having jurors unnecessarily report for service in connection with the case, the Court may, on its own motion, for good cause shown, assess costs incurred in having jurors report for service equally between the parties or against one or more of the parties responsible for failure to notify the Court.

Local Criminal Rule 24. Confidentiality of juror information

24.1 All information obtained from juror questionnaires shall be confidential. Inspection of juror questionnaires shall be permitted only during the business hours of the Clerk's Office, beginning three (3) business days before trial and continuing through voir dire. Upon request of the Court, juror questionnaire copies will be available from the Clerk's Office for counsel beginning three (3) business days before trial. Juror questionnaires will not be available via mail or facsimile transmission. All questionnaires must be returned to the jury clerk after the jury has been sworn.

Local Criminal Rule 26. Attorney as witness

26.1 Leave of court to conduct the trial of an action in which the attorney is to be a witness shall be sought in advance of trial when feasible.

VII. JUDGMENT

Local Criminal Rule 32. Sentencing

32.1 Notice - The office of the responsible judge or magistrate judge setting the sentence shall notify all necessary parties of the date of sentencing. This includes the marshal, the person responsible for issuing a writ, if needed, the probation office, the U.S. Attorney, the defendant and/or defendant's attorney. This date may be set at the time of taking a plea or a verdict of guilty.

32.2 Presentence report - Unless waived pursuant to Fed. R. Crim. P. 32(c), a presentence report shall be prepared in every felony case and may be prepared in misdemeanor cases in the Court's discretion.

- (a) Initial interview - The initial interview with the defendant, defendant's counsel, and the probation officer shall be conducted within five (5) working days of the date of the order setting sentencing date. Counsel for the government shall make available the offense conduct information, including all relevant conduct, within five (5) working days of the date of such order.
- (b) Disclosure of presentence report - At least thirty-five (35) calendar days before the date scheduled for sentencing, the probation officer shall provide a copy of the presentence report (except the sentencing rationale) to (1) counsel for the government, and (2) counsel for the defendant or, where the defendant is pro se, to the defendant. Disclosure of the presentence investigation report (and any subsequent revisions and addenda thereto) to a defense counsel shall be deemed to be disclosure to the defendant and it shall be the obligation of the defense counsel to provide a copy of the report to the defendant forthwith.
- (c) Time of disclosure - The presentence report shall be deemed to have been disclosed to a recipient when a copy of the report is physically delivered or three (3) days after a copy of the report has been mailed. The presentence report shall contain the date sent.
- (d) Objections to presentence report - Within fourteen (14) calendar days after disclosure of the presentence report, each counsel or pro se defendant shall file a written response to the probation office which shall acknowledge disclosure, and which shall contain all objections, and the reasons therefor, to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report, or which shall contain a statement that there is no objection to the report. The response filed on behalf of the defendant shall contain the defendant's signature in addition to that of counsel. Each written response shall contain a certificate indicating that all other recipients of the presentence report and the probation officer have been served with a copy of the response.
- (e) Notification for scheduling purposes - Upon expiration of the time permitted for the filing of objections, the probation officer shall submit the presentence report to counsel for the

government, counsel for the defendant, or where the defendant is pro se, to the defendant, and to the sentencing judge if no objections have been received. If objections have been received, the probation officer shall so notify the judge.

- (f) Non-judicial resolution of objections - After receiving a timely objection, the probation officer shall promptly conduct any further investigation and make any revisions to the presentence report that may be necessary. The probation officer may require each counsel and pro se defendant to meet with the officer to discuss unresolved factual and legal issues, and may request that such persons meet with each other for the same purpose.
- (g) Submission of presentence report to the Court - Not less than seven (7) working days before the date set for sentencing, the probation officer shall submit the final presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any unresolved objections that counsel or the pro se defendant may have, together with the officer's comments thereon. The probation officer shall certify that the contents of the report, including any revisions and the addendum, have been disclosed to counsel and any pro se defendant, and that the addendum fairly states any remaining objections.
- (h) Motions for departure; sentencing memoranda - Not less than five (5) working days before the date set for sentencing, any party seeking an upward or downward departure must file and serve its motion for such relief. All sentencing memoranda shall be filed by the same date. A copy of all motions and sentencing memoranda, if any, shall be served on the probation officer.
- (i) Judicial resolution of objections - Upon receipt of the final report and attachments, the sentencing judge shall determine the extent of any further proceedings necessary in light of the nature of any unresolved objections. The judge may hold all objections for resolution at the time of sentencing. In the alternative, the judge may resolve any objections prior to sentencing and may afford the parties a reasonable opportunity for the submission of further written objections before the imposition of sentence. Any objections shall be made in the same manner as provided for in this rule. Where the Court determines that a hearing is necessary to resolve the disputed sentencing matters, a hearing may be held for that purpose, either on the date of sentencing or at an earlier time.
- (j) Standard for resolution of objections - Except with regard to any unresolved objections, the report of the presentence investigation may be accepted by the Court as accurate. In resolving disputed issues of fact, the Court may consider any reliable information presented by the probation officer, the defendant, or the government.
- (k) Late objections - Upon a showing of good cause, the Court may allow a new objection to be raised at any time prior to the imposition of sentence.
- (l) Time period - The time periods set forth in this rule may be modified by the Court for good cause shown, or upon its own motion, except that in no event shall sentence be

imposed less than ten (10) days following disclosure of the presentence report without the consent of the defendant. In computing the time periods, no exception shall be made for weekends or holidays.

- (m) Limitations on disclosure - Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under the Federal Rules of Criminal Procedure.
- (n) Relationship to Fed. R. Crim. P. 32 - This rule shall not be construed to limit any sentencing procedure modifications permitted by Rule 32 of the Federal Rules of Criminal Procedure.
- (o) Release of presentence report to other officers - The Chief Probation Officer may, in his or her discretion, disclose a presentence report to a federal or state probation or parole officer in connection with that officer's conduct of official duties regarding a person previously sentenced by this Court.

32.3 Judgments and commitments - The case manager of the judge presiding over a criminal matter shall provide a copy of the Judgment and Commitment to the United States Marshal within forty-eight (48) hours after the defendant has been sentenced to ensure expeditious transfer of the prisoner to the appropriate institution.

Local Criminal Rule 32.1. Actions against persons on probation or supervised release

32.1.1 Whenever the probation office requests action against a probationer or person on supervised release, the probation office shall secure a date from the office of the judge or magistrate judge conducting the preliminary, revocation, or modification hearing and notify all necessary parties. This includes the marshal, the person responsible for issuing a writ, if needed, the U.S. Attorney, and the defendant and/or defendant's attorney.

X. GENERAL PROVISIONS

Local Criminal Rule 44. Motion for appointment

44.1 If trial counsel was appointed under the Criminal Justice Act and intends to prosecute the appeal, counsel should file a motion with the Clerk of the Court of Appeals for appointment on appeal. Whether on such a motion or otherwise, no further proof of the defendant's indigency need be submitted unless specifically required by the Court of Appeals.

Local Criminal Rule 47. Motions

47.1 Dispositive motions

- (a) Definition - Dispositive motions are motions to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a case, to involuntarily dismiss an action, and other dispositive motions as defined by law.
- (b) Length of briefs - Any brief filed in support of or in opposition to a dispositive motion shall not exceed twenty-five (25) pages in length, exclusive of cover sheet, tables, and indices.
- (c) Briefing schedule - Any party opposing a dispositive motion shall, within twenty-eight (28) days after service of the motion, file a responsive brief and any supporting materials. The Court may permit or require further briefing.
- (d) Oral argument - Any party desiring oral argument shall include a request for oral argument in the caption and the heading of the party's brief. In its discretion, the Court may schedule oral argument or may dispose of the motion without argument at the end of the briefing schedule. The time for oral argument on all motions shall be scheduled and noticed by the Court at the earliest convenient date.

47.2 Nondispositive motions

- (a) Definition - Nondispositive motions are all motions not specifically listed in LCrR 47.1.
- (b) Length of briefs - Any brief filed in support of or in opposition to a nondispositive motion shall not exceed ten (10) pages in length, exclusive of cover sheet, tables, and indices.
- (c) Briefing schedule - Any party opposing a nondispositive motion shall, within fourteen (14) days of service of the motion, file a responsive brief and supporting materials. The Court may permit or require further briefing. Reply briefs may not be filed without leave of court.
- (d) Oral argument - Any party desiring oral argument shall include a request for oral argument in the caption and the heading of the party's brief. In its discretion, the Court may schedule oral argument or may dispose of the motion without argument at the end of the briefing schedule. The time for oral argument on all motions shall be scheduled and noticed by the Court at the earliest convenient date.

47.3 Motions for reconsideration

- (a) Grounds - Generally, and without restricting the discretion of the Court, motions for reconsideration which merely present the same issues ruled upon by the Court shall not be granted. The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled, but also show that a different disposition of the case must result from a correction thereof.
- (b) Response to motions for reconsideration - No answer to a motion for reconsideration will be allowed unless requested by the Court, but a motion for reconsideration will ordinarily not be granted in the absence of such request. Any oral argument on a motion for reconsideration is reserved to the discretion of the Court.

Local Criminal Rule 49. Form of pleadings and other papers; filing requirements

49.1 Place of filing - Pleadings and other papers may be filed with the Clerk at any divisional office. If a hearing is scheduled, it is incumbent upon the party to insure that the judge or magistrate judge receives a copy of such relevant pleadings or other papers sufficiently in advance of the hearing. A locked filing depository is provided for filing documents during business and certain non-business hours. The Clerk will retrieve documents from the filing depositories twice during each business day. Documents are considered filed with the Court on the date and at the time indicated by the time stamp provided at each filing depository. Documents that are not stamped with the time stamp will be considered filed with the Court on the date and at the time they are retrieved by the Clerk's office.

49.2 Paper size and format - All documents must be double spaced in 8½ x 11 inch format with writing on only the face of each sheet. Type must be no smaller than 12 point type and all margins must be at least one inch.

49.3 Binding - All pleadings and other papers that have numerous pages must be bound with a fastener. Originals should be stapled or bound on the top margin with a two-hole fastener. Copies may be bound in the same manner as originals or in a binder. Paper clips and other types of clips shall not be used; fasteners shall pass through the pages.

49.4 Date, address and telephone number - All pleadings and other papers shall contain the date of signing and the address and telephone number of the signing attorney or pro se party.

49.5 Number of copies - All traditionally filed documents must be filed in duplicate -- the original and one copy. If service of any paper is to be made by the United States Marshal, sufficient additional copies shall be supplied for service upon each other party. If file stamped copies of documents are requested to be returned to the offering party, a suitable self-addressed, postage paid envelope shall be supplied.

49.6 Proof of service - Proof of service of all pleadings and other papers required or permitted to be served shall be filed promptly after service and may be made by written acknowledgment of service, by affidavit of the person making service or by written certification of counsel. Proof of service shall state the date and manner of service. Proof of service is unnecessary for documents served electronically on a registered attorney.

49.7 Tendering of orders - A party tendering an order for entry must supply the Clerk with the original for the judge. All orders will be distributed to the parties by the Clerk.

49.8 Filing under seal

- (a) Request to seal - Requests to seal a document must be made by motion and will be granted only upon good cause shown. If the document accompanies the motion, it shall be clearly labeled "Proposed Sealed Document" and shall include an envelope suitable for sealing the document. The envelope shall have the caption of the case, case number, title of document,

and the words “Contains Sealed Documents” prominently written on the outside. The document shall not be considered sealed until so ordered by the Court.

- (b) Documents submitted pursuant to court order - A document submitted pursuant to a previous order by the Court authorizing the document to be filed under seal shall be clearly labeled “Sealed Document,” shall be submitted in an envelope suitable for sealing the document, and identify the order or other authority allowing filing under seal. The caption of the case, case number, title of document, and the words “Contains Sealed Documents” shall be prominently written on the outside of the envelope.

49.9 Rejection of filings - The Court may order the Clerk to reject any pleading or other paper that does not comply with these rules or the Federal Rules of Criminal Procedure unless such noncompliance is expressly approved by the Court. The Clerk shall return any rejected filing to the party tendering it, along with a statement of the reasons for rejection.

49.10 Filing and service by electronic means

- (a) General information; definitions - Pursuant to Rule 49(d) of the Federal Rules of Criminal Procedure, the Clerk will accept pleadings and other papers filed and signed by electronic means in accordance with this rule. All papers filed by electronic means must comply with technical standards, if any, now or hereafter established by the Judicial Conference of the United States.

This rule shall apply to all criminal actions maintained in the court’s electronic case filing system. All documents, whether filed electronically or on paper, will be placed into the electronic case filing system, except for sealed documents and certain voluminous documents. Attorneys must file and serve all documents electronically by use of the ECF system unless (1) the attorney has been specifically exempted by the Court for cause or (2) a particular document is not eligible for electronic filing under this rule.

As used in this rule, the term

- “ECF system” means the electronic case filing system maintained by this Court;
- “registered attorney” means an attorney who is authorized pursuant to Rule 49.10(b) to file documents electronically and to receive service on the ECF system;
- “charging document” means the original complaint, indictment (or any superseding indictment), information or other document by which charges are brought in a criminal case;
- “electronically filed document” means any order, opinion, judgment, pleading, notice, transcript, motion, brief or other paper (except a charging document)

- submitted electronically to the ECF system;
- “traditionally filed document” means a pleading or other paper submitted to the Clerk in paper form for filing;
- “NEF” means the Notice of Electronic Filing generated by the ECF system;
- “nonelectronic means of service” means one of the methods of service authorized by Rule 49(b) of the Federal Rules of Criminal Procedure and Rule 5(b) of the Federal Rules of Civil Procedure, except electronic service under FED. R. CIV. P. 5(b)(2)(D).

(b) Mandatory registration; Attorney training

- (i) Every attorney practicing in this Court must register to file and serve documents electronically by the ECF system.
- (ii) To be entitled to register as a user of the ECF system, an attorney must be admitted to practice in this District, be a member in good standing, and have filed with the Clerk a completed ECF Attorney Registration form. In addition, the attorney or the attorney’s firm must have a Public Access to Court Electronic Records (PACER) account and an e-mail address. Detailed registration information is available on the Court’s Website (www.miwd.uscourts.gov). Upon receipt of the ECF Attorney Registration form, the Court will issue a login name and a user password to qualified attorneys. All registered attorneys have an affirmative duty to inform the Clerk immediately of any change in their e-mail address. A registered attorney may not knowingly cause or allow another person to file a document using the attorney’s login name and password, except for members of the attorney’s staff. Authorized use of an attorney’s login name and password by a staff member is deemed to be the act of the attorney. However, a registered attorney must not allow an unregistered attorney, even a member of the same firm, to use his or her login name and password. If a login name and/or password should become compromised, the attorney is responsible for notifying the ECF Help Desk immediately.
- (iii) The Clerk’s Office will provide periodic training sessions on use of the ECF system. The Court will also provide on its Website an on-line tutorial demonstrating the use of the ECF system. Law firms are encouraged to have individuals responsible for electronic filing (attorney, paralegal or automation specialist) attend a live training session or use the on-line tutorial.

- (c) Charging documents - The filing of charging documents must be accomplished in the traditional manner (not electronically). The United States Attorney, however, is strongly encouraged to accompany charging documents with a diskette or CD-ROM containing charging documents (bearing an image of any signature required by law) in portable

document format (PDF), so that these documents can be added to the electronic case file. The Court may issue a summons or warrant electronically, but such process may be served only in accordance with Rule 4(c) of the Federal Rules of Criminal Procedure.

(d) Electronic filing

(i) Filing - All attorneys must file all pleadings and other papers permitted by the Federal Rules and the Local Rules of this Court (except charging documents) electronically in all criminal cases, subject to the exceptions set forth below. All electronically filed documents must be in PDF digital format and must be submitted in accordance with the instructions set forth on the Court's Website in the User's Manual. Attorneys are strongly urged to accompany all traditionally filed documents with a diskette or CD ROM of their papers in PDF digital format, to facilitate adding the document to the electronic case file.

(ii) Papers that may not be filed electronically - The following documents may not be filed electronically, but must be submitted in paper form:

(A) Documents filed under seal;

(B) Documents containing the signature of a defendant;

(C) Any document or attachment thereto exceeding 5MB in size.

(iii) Documents that must be accompanied by a signed original - The following documents must be filed electronically, but must be accompanied by a signed original document, with a copy served on all other parties:

(A) Affidavits in support of or in opposition to a motion (affidavits of service may be filed electronically without filing a signed original);

(B) Declarations under penalty of perjury;

(C) Certified copies of judgments or orders of other Courts.

The electronically filed version of such documents must contain an "s/_____" block indicating that the paper document bears an original signature.

(iv) Deadlines - Filing documents electronically does not in any way alter any filing deadlines. An electronically filed document is deemed filed upon completion of the transmission and issuance by the Court's system of an NEF. In situations where attachments to an electronically filed document are submitted in paper form,

the electronic document is deemed filed upon issuance of the NEF, provided that the paper exhibits are filed and served within 72 hours thereof. In situations where Rule 49.10(d)(iii) requires filing of a signed, original document in addition to the electronic document, the document is deemed filed upon issuance of the NEF, provided that the signed original is filed within 72 hours thereof. All electronic transmissions of documents must be completed (i.e., received completely by the Clerk's Office) prior to midnight, Eastern Time, in order to be considered timely filed that day. Where a specific time of day deadline is set by Court order or stipulation, the electronic filing must be completed by that time.

- (v) Technical failures - The Clerk shall deem the Court's Website to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon (Eastern Time) that day, in which case, filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings must be accompanied by a declaration or affidavit attesting to the filer's failed attempts to file electronically at least two times after 12:00 noon separated by at least one hour on each day of delay because of such technical failure. The initial point of contact for any practitioner experiencing difficulty filing a document electronically shall be the ECF Help Desk, available via phone at (616) 456-2206 or (800) 290-2742, or via e-mail at ecfhelp@miwd.uscourts.gov.
- (vi) Official record; discarding of traditionally filed documents - For purposes of Rule 55 of the Federal Rules of Criminal Procedure, the official record of all proceedings filed on and after November 3, 2003, is the electronic file maintained on the Court's ECF system. After a case is closed and all appeals of right are completed, the Clerk's Office will discard all traditionally filed documents, except those papers that may not be filed electronically pursuant to subsection (d)(ii) of this rule.
- (vii) Exhibits and attachments - Filers must not attach as an exhibit any pleading or other paper already on file with the Court, but shall merely refer to that document. All exhibits and attachments, whether filed electronically or traditionally, must contain on their face a prominent exhibit number or letter. Exhibits too large to be filed electronically may be submitted traditionally. If one or more attachments or exhibits to an electronically filed document are being submitted traditionally under this rule, the electronically filed document must contain a notice of that fact in its text. For example:

(Exhibits 1, 2 and 3 to this Motion are filed electronically; Exhibits 4 and 5 are filed in paper form pursuant to Local Criminal Rule 49.10(d)(vii)).

or

(All exhibits to this brief are filed in paper form pursuant to Local Criminal

Rule 49.10(d)(vii)).

(e) Signature

- (i) Attorneys - A registered attorney's use of the assigned login name and password to submit an electronically filed document serves as the registered attorney's signature on that document, for purposes of Fed. R. Civ. P. 11 and for all other purposes under the Federal Rules of Criminal and Civil Procedure and the Local Rules of this Court. The identity of the registered attorney submitting the electronically filed document must be reflected at the end of the document by means of an "s/ [attorney's name]" block showing the attorney's name, followed by the attorney's business address, telephone number, and e-mail address.
- (ii) Multiple signatures - The filer of any electronically filed document requiring multiple signatures (e.g., stipulations, joint motions) must list thereon all the names of other signatories by means of an "s/ ____" block for each. By submitting such a document, the filer certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filer has their actual authority to submit the document electronically. The filer must maintain any records evidencing this concurrence for subsequent production to the Court if so ordered or for inspection upon request by a party until one year after the final resolution of the action (including appeal, if any).

A non-filing signatory or party who disputes the authenticity of a signature on an electronically filed document must file an objection to the document within ten days after service of that document.

- (iii) Court reporters - The electronic filing of a transcript by a court reporter by use of the court reporter's login name and password shall be deemed the filing of a signed and certified original document for all purposes.
- (iv) Judges - The electronic filing of an opinion, order, warrant, judgment or other document by a judge (or authorized member of the judge's staff) by use of the judge's login and password shall be deemed the filing of a signed original document for all purposes.
- (v) Clerk of Court or Deputy Clerks - The electronic filing of any document by the Clerk of Court or by a Deputy Clerk by use of that individual's login and password shall be deemed the filing of a signed original document for all purposes.
- (vi) Probation Office and Office of the U.S. Marshal - The Probation Office and Office of the United States Marshal for this district are authorized to file and serve documents electronically. The electronic filing of any document by the Probation Office and Office of the United States Marshal by use of the assigned login and

- password shall be deemed the filing of a signed original document for all purposes.
- (vii) Signature of defendant - Documents containing the original signature of the defendant may not be filed electronically. They must be submitted either in paper form or as a scanned PDF document containing the image of defendant's manuscript signature.
 - (f) Proposed pleadings - If the filing of an electronically submitted document requires leave of Court, such as a brief in excess of page limits, the proposed document must be attached as an exhibit to the motion seeking leave to file. If the Court grants leave to file the document, the Clerk of Court will electronically file the document without further action by the attorney.
 - (g) Proposed orders - Proposed orders must be submitted electronically. All proposed orders must be in PDF format and must be: (1) attached as an exhibit to a motion or stipulation; or (2) contained within the body of a stipulation; or (3) submitted separately. If the Judge approves the proposed order, it will be refiled electronically under a separate document number.
 - (h) Service of electronically filed documents
 - (i) Summons and warrants - Service of warrants and summons must be made in accordance with FED. R. CRIM. P. 4(c) and may not be made electronically.
 - (ii) Service on registered attorneys - By registering under this rule, an attorney automatically consents to electronic service by both the Court and any opposing attorney of any electronically filed document in any case in which the registered attorney appears. Consequently, service of an electronically filed document upon a registered attorney is deemed complete upon the transmission of an NEF to that attorney under subsection (h)(iv) of this rule. Traditionally filed documents must be served on registered attorneys by nonelectronic means of service, and a proof of service filed.
 - (iii) Service on United States Probation Office - A registered attorney may serve the United States Probation Office electronically with a copy of sentencing memoranda, motions for departure, or any other document that the Federal Rules of Criminal Procedure or these rules require to be served on the Probation Office. If such documents are filed by a registered attorney electronically, service will be accomplished by the ECF system automatically. If such documents are filed traditionally, they must be served on the Probation Office by nonelectronic means of service.
 - (iv) Service on unregistered attorneys and *pro se* parties - Counsel filing any pleading or other paper must serve attorneys not registered under this rule and *pro se* parties by

nonelectronic means of service, and a proof of service filed.

- (v) Method of electronic service - At the time a document is filed either electronically or by scanning paper submissions, the Court's system will generate an NEF, which will be transmitted by e-mail to the filer and all registered attorneys who have appeared on that case. The NEF will contain a hyperlink to the filed document. The attorney filing the document should retain a paper or digital copy of the NEF, which serves as the Court's date-stamp and proof of filing. Transmission of the NEF to the registered e-mail address constitutes service of an electronically filed document upon any registered attorney. Only service of the NEF by the Court's system constitutes electronic service; transmission of a document by one party to another by regular e-mail does not constitute service.
- (vi) Effect on time computation - Electronic service under this rule is complete upon transmission. The additional three (3) days to do an act or take a proceeding after service of a document applies when service is made electronically, by virtue of FED. R. CRIM. P. 45(c).
- (i) Court orders and judgments - Judgments and orders may be filed electronically by the Court or authorized Court personnel. Any order or other Court-issued document filed electronically without the image of the manuscript signature of the judge or clerk has the same force and effect as a document bearing an original signature. Upon entry of an order or judgment in a criminal proceeding, the clerk will transmit an NEF to all registered attorneys. Such transmission constitutes the notice to registered attorneys required by FED. R. CRIM. P. 49(c). The clerk will provide notice to attorneys not registered under this rule and *pro se* parties by nonelectronic means of service.
- (j) Access to electronically stored documents - Any person may review at the Clerk's Office filings in a criminal case that have not been sealed by the Court. Any person may retrieve a docket sheet in a criminal case through the PACER system and may access electronically the text of documents (except sealed documents) stored on the ECF system and filed on or after November 1, 2004. PACER access to such documents will be available on or shortly after November 1, 2004. The provisions of Local Criminal Rule 12.7 concerning privacy apply to all electronically stored documents.
- (k) Facsimile transmissions - The Clerk will not accept for filing any pleading or other paper submitted by facsimile transmission.

Local Criminal Rule 50. Prompt disposition of criminal cases

50.1 Pursuant to statutory requirements, the judges of the United States District Court for the Western District of Michigan have adopted a plan to minimize undue delay and further the prompt disposition of cases. Copies of the plan are available in the Clerk's Office.

Local Criminal Rule 56. District courts and clerks; issuance of process

56.1 Time and place of holding court - The Court shall be deemed to be in continuous session for transacting judicial business on all business days throughout the year. Proceedings may be held at such times and places within the district as the judge to whom the case is assigned shall designate.

56.2 Clerk's Office - The Court maintains Southern Division offices in Grand Rapids, Kalamazoo and Lansing and a Northern Division office in Marquette. The Southern Division comprises the counties of Allegan, Antrim, Barry, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Clinton, Eaton, Emmet, Grand Traverse, Hillsdale, Ingham, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, Saint Joseph, Van Buren, and Wexford. The Northern Division comprises the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft. 28 U.S.C. § 102(b).

56.3 Issuance of process - Any party requesting the issuance of any process or who initiates any proceeding in which the issuance of process is required by statute, rule or order, shall prepare all required forms. The party shall present the process to the Clerk for signature and sealing when required. The Clerk shall, upon request, and subject to current availability, make reasonable supplies of all blank official forms of process available to attorneys admitted to practice in this Court, or their agents or employees.

56.4 Books and records kept by the Clerk

- (a) Custody of files - Files in Southern Division cases shall be maintained in the divisional office where the judge or magistrate judge assigned to the case sits. All Northern Division files shall be maintained in Marquette.
- (b) Removal of files, exhibits and papers - No files, pleadings, exhibits or papers shall be removed from the offices of the Clerk except upon order of the Court. Whenever files, pleadings, exhibits or papers are removed from an office of the Clerk, the person receiving them shall sign and deliver to the Clerk a receipt therefor.
- (c) Duplication of papers - The Clerk shall make reasonable arrangements for the duplication of unrestricted papers in any court file.

56.5 Assignment of cases to judges

- (a) Method - Each case upon filing shall be assigned to a judge who shall continue in the case or matter until its final disposition, except as hereinafter provided.
- (b) Sequence - All initial papers shall be first filed in the office of the Clerk who shall stamp on the indictment, information, complaint, petition, or other initial paper of each case so filed, the number of the case and the name of the judge to whom it is assigned. The

numbering and assignment of each case shall be completed before processing the next case.

- (c) Procedure - The Clerk shall use automated or manual means to assign new cases to judges at random in accordance with administrative orders issued by the Court from time to time. The Clerk shall mark the name of the assigned judge on the first document of the case and preserve a record of such assignments.
- (d) Exceptions
 - (i) Refilings - If a case is dismissed and later refiled, either in the same or similar form, upon refileing it shall be assigned or transferred to the judge to whom it was originally assigned.
 - (ii) Subsequent proceedings - Post-conviction proceedings in criminal cases (including motions under section 2255 and proceedings to modify or revoke probation or supervised release) shall be assigned to the judge who sentenced the defendant.
 - (iii) Related cases
 - (A) Definition - Cases are deemed related when (1) a superseding indictment or information has been filed; or (2) any other indictment or information is pending against the same defendant(s); (3) an indictment or information charges contempt of court or other crime arising from alleged violation of an order entered in a previous case; or (4) an indictment is returned against a defendant who is then on probation or supervised release to a judge, provided the new case involves only the same defendant.
 - (B) Determination - When it appears to the Clerk that two or more cases may be related cases, they shall be referred to the magistrate judge assigned to the judge who has the earliest case to determine whether or not the cases are related. If related, the cases will be assigned to the same judge. If cases are found to be related cases after assignment to different judges, they may be reassigned by the Chief Judge to the judge having the related case earliest filed.
- (e) Miscellaneous docket - The miscellaneous docket of the Court shall be conducted in the same manner as the assignment of cases covered in this rule and it shall include all grand jury matters.
- (f) Effect - This rule is intended to provide for an orderly division of the business of the Court and not to grant any right to any litigant.
- (g) Duty of parties - All parties shall notify the Court in writing of all pending related cases

and any dismissed or remanded prior cases.

56.6 Reassignment to promote judicial economy - The Court may reassign cases from one district judge to another (a) to equalize and balance workloads among judges; (b) to assign cases to senior or visiting judges or remove cases from their dockets as necessary; (c) to comply with the requirements of the Speedy Trial Act, or (d) for other reasons of judicial economy. Any case may be reassigned under this rule from one judge to another judge with the consent of both judges. Cases may also be reassigned by administrative order of the Chief Judge if approved by a majority of active district judges.

56.7 Criminal matters in the Northern Division - With the permission of the district judge to whom a case is assigned, any available judge may take a guilty plea, preside over trial, or sentence a defendant in Northern Division cases.

Local Criminal Rule 57. Attorneys; magistrate judges; miscellaneous

57.1 Attorneys

- (a) Definitions - As used in Local Rules 57.1(a) through 57.1(q), these terms are defined below.
- (i) “Discipline” means an order entered against an attorney by the Michigan Attorney Discipline Board, a similar disciplinary authority of another state, or a state or federal court revoking or suspending an attorney’s license or admission before a court to practice law, placing an attorney on probation or inactive status, requiring restitution, or a transfer to inactive status in lieu of discipline.
 - (ii) “Chief Judge” means the Chief Judge or another district judge designated to perform the Chief Judge’s functions under these rules.
 - (iii) “Practice in this Court,” means, in connection with an action or proceeding pending in this Court, to appear in, commence, conduct, prosecute, or defend the action or proceeding; appear in open court; sign a paper; participate in a pretrial conference; represent a client at a deposition; counsel a client in the action or proceeding for compensation; or otherwise practice in this Court or before an officer of this Court.
 - (iv) “State” means a state, territory, commonwealth, or possession of the United States, and the District of Columbia.
 - (v) “Serious crime” means:
 - (A) a felony; or
 - (B) a crime, a necessary element of which, as determined by the statutory or common law definition of the crime in the jurisdiction of the conviction, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, willful failure to pay income tax, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit a serious crime.
- (b) Roll of attorneys - The bar of this Court consists of those currently admitted to practice in this Court. The Clerk shall maintain the roll of admitted attorneys.

(c) Eligibility for admission

- (i) Eligibility - A person who is duly admitted to practice in a court of record of a state, and who is in active status and in good standing, may apply for admission to the bar of this Court, except as provided in (ii) below.
- (ii) Effect of prior discipline - If the applicant has been held in contempt, disciplined, or convicted of a crime, the Chief Judge shall make an independent determination as to whether the applicant is qualified to be entrusted with professional matters and to aid in the administration of justice as an attorney and officer of the Court. An applicant dissatisfied with the decision of the Chief Judge may within thirty (30) days file a petition for a hearing before a three judge panel as described in LCivR 57.1(m)(iii).
- (iii) Pro hac vice admissions - This Court disfavors pro hac vice admission and prefers that all lawyers appearing before it become full members of the bar of the Court. Pro hac vice admission may nevertheless be allowed on a temporary basis pending full admission, or in unusual circumstances.

(d) Procedure for admission

- (i) An applicant for admission to the bar of this Court shall pay the fee established by the Court and complete the application provided by the Clerk. The following information must be included in the application:
 - (A) office address and telephone number;
 - (B) the date of admission and each jurisdiction where the applicant has been admitted to practice; and
 - (C) whether the applicant has ever been held in contempt, subjected to discipline as defined by these rules or convicted of a crime. If so, the applicant shall state the facts and the final disposition of each such instance.
- (ii) A sponsor must sign a declaration supporting the application for admission. A sponsor may be a member of the bar of this Court or, for applicants residing in another state, a judge of a court of record of that state, or a federal judge. The Chief Judge may waive the sponsorship requirement for newly admitted members of the State Bar of Michigan.
- (iii) The application for admission shall be accompanied by a current certificate of active status and good standing issued by a state court or other state licensing authority.

- (iv) If the Court grants the application, the applicant shall take or sign the oath of office. The Clerk shall issue a certificate of admission.
- (e) Limited pre-admission practice - An attorney may appear of record and file papers in a case or proceeding before actual admission to practice in this Court if:
 - (i) the attorney pays the fee established by the Court;
 - (ii) the attorney files the application required by this rule with the Clerk; and
 - (iii) the attorney is admitted before a personal appearance in court.
- (f) Local counsel - The Court may, in its discretion, require any attorney whose office is a great distance from the courthouse to retain local counsel. Local counsel shall enter an appearance in the case and shall have both the authority and responsibility for the conduct of the case should lead counsel be unavailable for any appearance, hearing or trial.
- (g) Government attorneys - An attorney representing the United States, or an agency of the United States may practice in this Court in official capacity without applying for admission. If the attorney does not have an office in the district, he or she shall designate the United States Attorney or an Assistant United States Attorney for this district to receive service of all notices and papers. Service of notice on the United States Attorney or designated assistant shall constitute service on the nonresident government attorney.
- (h) Law student practice
 - (i) Admission - Upon a satisfactory showing of eligibility and taking of the prescribed oath, a law student in an approved program may appear before the Court under the supervision of an attorney who has been duly certified. The supervising attorney may be an attorney in the U.S. Attorney's Office, an attorney in private practice admitted to practice before this Court, or a faculty member of an ABA-approved law school teaching in an eligible law school clinical program as defined in (iii) below.
 - (ii) Eligibility of law student - To be eligible to practice, a law student must:
 - (A) be enrolled in, or have graduated from, a law school approved by the American Bar Association;
 - (B) have completed at least two-thirds of the credit hours necessary for graduation from that law school;
 - (C) be certified by the dean of the law school as being of good character and of

sufficient legal ability and training to perform as a legal intern;

- (D) have a working knowledge of the Federal Rules of Civil and Criminal Procedure, Evidence, and Code of Professional Responsibility;
- (E) have been certified by the Court pursuant to this rule;
- (F) if the student qualifies as a legal intern under a supervising law school faculty member, be registered for credit in a law school clinical program which has been certified by the Court; and
- (G) have been appropriately introduced to the Court by a member of the bar of this Court or by the supervising faculty member.

(iii) Eligibility of program

(A) An eligible law school clinical program:

- (1) must be offered for credit at a law school approved by the American Bar Association;
- (2) must be supervised by a full-time or adjunct law school faculty member who is admitted to practice before this Court;
- (3) must include academic and practical advocacy training within the program;
- (4) must be certified by this Court;
- (5) must provide malpractice insurance for its activities, supervisors and student participants in the legal representation of any clients;
- (6) must designate an official within the Western District to whom all notices may be sent in connection with this rule or any legal representation provided pursuant to this rule; and
- (7) may arrange for a supervisor to accept compensation other than from a client, such as compensation under the Criminal Justice Act.

(B) An eligible non-law school clinical program:

- (1) must be supervised by a member of a bar who is admitted to practice before this Court;

- (2) must be developed to provide practical advocacy training within the program;
- (3) must provide direct supervision by the supervising attorney;
- (4) must be for a period of no less than fourteen (14) weeks;
- (5) must be certified by the Court;
- (6) must provide malpractice insurance for its activities, supervisors and student participants in the legal representation of any client under this program;
- (7) may be, but need not be, under the direction of a full-time or adjunct faculty member of a law school; and
- (8) must identify the supervising attorney to whom all notices may be sent.

(iv) Requirements for supervisor - A supervisor must:

- (A) if a full-time or adjunct member of a law school faculty, be certified by the dean of the law school as being of good character, and as having sufficient legal ability and adequate litigation experience to fulfill the responsibilities as the supervisor. If the supervisor is not a member of a law school faculty, the certification may be provided by a practicing member of the bar;
- (B) be admitted to practice in this Court;
- (C) be present with the student in court and at other proceedings in which testimony is taken and as required under subsection (v) of this rule;
- (D) cosign all pleadings or other documents filed with the Court;
- (E) assume full personal and professional responsibility for a student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation with represented clients;
- (F) assist and counsel the student in activities pursuant to this rule and review all such activities with the student to the extent required for the proper practical training of the student and protection of the client; and

- (G) be responsible for supplemental oral or written work for the student as is necessary to ensure proper representation of the client.
- (v) Approved activities - A certified student under the personal supervision of a supervisor may participate in activities as set out below.
 - (A) A student may represent any client, including federal, state or local government bodies, if the client on whose behalf the student is appearing has indicated in writing consent to that appearance and the supervising attorney has also indicated in writing approval of that appearance.
 - (B) A student may represent a client in any criminal, civil or administrative matter on behalf of any person or governmental body. However, any judge or magistrate judge of this Court retains the authority to limit a student's participation in any individual case before that judge or magistrate judge.
 - (C) Representation shall include holding of consultations, preparation of documents for filing or submission to the Court, participation in discovery proceedings and the participation in trials and other court proceedings.
 - (D) The supervising attorney must be present with the student for all court appearances or for the taking of oral depositions except that a legal intern under a law school clinical program may appear in court without the supervising attorney unless the Court directs the presence of the supervisor. The Court shall be advised in advance whenever a legal intern is scheduled to appear in court without a supervising attorney.
 - (E) A student may make no binding commitments on behalf of an absent client prior to client and supervisor approval. Documents or papers filed with the Court must be read, approved and cosigned by the supervising attorney. The Court retains the authority to establish exceptions to such activities.
 - (F) A judge of this Court may terminate the admission of the legal intern at any time without prior notice or hearing or showing of cause.
- (vi) Compensation - An eligible law student may neither solicit nor accept compensation or remuneration of any kind for services performed pursuant to this rule from the person on whose behalf services are rendered; but this rule will not prevent an attorney, legal aid bureau, law school or state or federal agency from paying compensation to an eligible law student, or making such charges for services as may be proper.
- (vii) Certification of student - Certification of a student by the law school dean or

designee, if such certification is approved by the Court, shall be filed with the Clerk and unless it is sooner withdrawn, shall remain in effect until the expiration of twelve (12) months. Certification will automatically terminate if the student does not take the first bar examination following graduation, or if the student fails to achieve a passing grade in the bar examination, or if the student is admitted to full practice before this Court. Certification of a student to appear in a particular case may be withdrawn by the Court at any time, in the discretion of the Court and without any showing of cause.

- (viii) Certification of program - Certification of a program by the Court shall be filed with the Clerk and shall remain in effect indefinitely unless withdrawn by the Court. Certification of a program may be withdrawn by the Court at any time, in the discretion of the Court and without any showing of cause.
- (ix) Certification of supervisor - Certification of a supervisor by the law school dean or member of the bar, if such certification is approved by the Court, shall be filed with the Clerk and shall remain in effect indefinitely unless withdrawn by the Court. Certification of a supervisor may be withdrawn by the Court at any time, in the discretion of the Court and without any showing of cause. Any judge or magistrate judge of this Court retains the authority to withdraw or limit a supervisor's participation in any individual case before that judge or magistrate judge. Certification of a supervisor may be withdrawn by the dean or attorney who originally certified the supervisor by mailing the notices of withdrawal to the Clerk.
- (i) Unauthorized practice - A person must be a member in good standing of the bar of this Court to practice in this Court or to hold himself or herself out as being authorized to practice in this Court, except that:
 - (A) a party may proceed in pro per;
 - (B) government attorneys may practice under LCivR 57.1(g); and
 - (C) law students may practice under LCivR 57.1(h).
 - (D) A licensed attorney who is not under suspension or disbarment in this or another federal or state court may:
 - (1) cosign papers or participate in pretrial conferences in conjunction with a member of the bar of this Court;
 - (2) represent a client in a deposition; and

- (3) counsel a client in an action or proceeding pending in this Court.
- (j) Consent to standards of conduct and disciplinary authority - An attorney admitted to the bar of this Court or who practices in this Court as permitted by this Rule is subject to the Rules of Professional Conduct adopted by the Michigan Supreme Court, except those rules a majority of the judges of this Court exclude by administrative order, and consents to the jurisdiction of this Court and the Michigan Attorney Grievance Commission and Michigan Attorney Discipline Board for purposes of disciplinary proceedings. Any person practicing or purporting to practice in this Court shall be presumed to know the Local Rules of this Court, including those provisions relating to sanctions for violations of these Rules.
- (k) Attorney discipline
- (i) Discipline other than suspension or disbarment - In accordance with the provisions of this Rule, a district judge may impose discipline, except suspension or disbarment from this Court, on any attorney who engages in conduct violating the Rules of Professional Conduct; willfully violates these rules, the Federal Rules of Criminal Procedure, or orders of the Court; or engages in other conduct unbecoming of a member of the bar of this Court. Prior to the imposition of discipline, the attorney shall be afforded an opportunity to show good cause, within such time as the Court shall prescribe, why the discipline should not be imposed. Upon the attorney's response to show cause, and after hearing, if requested and allowed by the district judge, or upon expiration of the time prescribed for a response if no response is made, the Court shall enter an appropriate order.
- (ii) Suspension or disbarment
- (A) Initiation of proceedings - Formal disciplinary proceedings leading up to possible suspension or disbarment shall be initiated by the issuance of an order to show cause, signed by the Chief Judge. Such order may be issued by the Court, on its own initiative or in response to allegations brought to the attention of the Court in a written complaint, if the Court determines further investigation is warranted. The Chief Judge may dismiss a complaint and refuse to issue an order to show cause if the complaint is found to be frivolous. The order to show cause issued by the Court shall include the specific facts that give rise to the proposed discipline, including the date, place and nature of the alleged misconduct, and the names of all persons involved. A copy of the order and any supporting documents shall be mailed to the attorney who is the subject of investigation. The attorney shall have twenty (20) days from the entry of the order in which to respond. The response shall contain a specific admission or denial of each of the factual allegations contained in the order and, in addition, a specific statement of facts on which the respondent relies, including all other

material dates, places, persons and conduct, and all documents or other supporting evidence not previously filed with the order that are relevant to the charges of misconduct alleged. The response shall contain a specific request for a hearing, if so desired by the respondent.

(B) Hearing - A disciplinary hearing shall be held only when the attorney under investigation has requested such a hearing in a timely response.

(1) Procedures - If it is determined that a hearing is necessary, the Chief Judge shall provide the attorney with written notice of the hearing a minimum of twenty (20) days before its scheduled date. The notice shall contain the date and location of the hearing and a statement that the attorney is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross examine adverse witnesses.

(2) Conduct of the hearing - The hearing shall be conducted by a panel of three judicial officers appointed by the Chief Judge, consisting of at least one active or senior district judge. The other members of the panel may include senior judges, bankruptcy judges, and magistrate judges. Any judge who initiated the request for discipline or before whom the allegation giving rise to the request took place shall not be appointed to the panel. The presiding judicial officer shall have the authority to resolve all disputes on matters of procedure and evidence which arise during the course of the proceeding. The presiding judicial officer may appoint an attorney to assist in the preparation and presentation of the evidence supporting the allegations giving rise to the request for discipline. All witnesses shall testify under penalty of perjury. Such hearings shall be confidential and be recorded. A decision of a majority of the three judge panel shall be final and binding. A written order shall be prepared which shall include the findings of the panel and disposition of the disciplinary charges. The order shall be a matter of public record and be sent to the respondent and complainant.

(3) Burden of proof - The conduct giving rise to the request for discipline shall be proven by a preponderance of the evidence.

(4) Failure to appear - The failure of the respondent to appear at the hearing shall itself be grounds for discipline.

(iii) Reinstatement after expiration of court-imposed discipline - After expiration of a period of suspension imposed by this Court, an attorney may apply for

reinstatement by filing an affidavit under LCrR 57.1(m)(iii). The application for reinstatement will be decided in accordance with the process set forth in that rule. Unless and until reinstated, a suspended attorney must not practice before this Court.

(l) Attorneys convicted of crimes

(i) Serious crimes

(A) When an attorney admitted to practice before this Court is convicted of a serious crime, the attorney is automatically suspended from practice in this Court without further action of the Court, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal. On receipt of written notice of conviction of a serious crime of an attorney admitted to practice before this Court, the Chief Judge shall enter an order suspending the attorney. The suspension shall continue until after final disposition of an appeal of the conviction, proceedings on remand after an appeal, and any disciplinary investigation and proceeding based on the conduct that resulted in the conviction. The Court shall serve a copy of the order on the attorney by certified mail.

(B) On application, the Chief Judge shall reinstate the attorney on a showing that:

(1) there is a jurisdictional deficiency that establishes that the suspension may not properly be ordered; such as that the crime did not constitute a serious crime or that the attorney is not the individual convicted; or

(2) the conviction has been reversed and there is no likelihood of further criminal prosecution or disciplinary action related to the conduct that resulted in the conviction. A reinstatement will not terminate any disciplinary investigation or proceeding based on the conduct that resulted in the conviction.

(ii) Other crimes - If the Court receives written notice of conviction of an attorney admitted to practice before this Court of a crime not constituting a serious crime, the matter shall be referred to the Chief Judge who may initiate proceedings under subsection (k)(i) or (ii) of this rule.

(iii) Obligations to report conviction - An attorney admitted to practice before this Court shall, on being convicted of any crime, immediately inform the Clerk. If the

conviction was in this Court, the attorney shall also provide to the Clerk a list of all other jurisdictions in which the attorney is admitted to practice. An attorney knowingly violating this provision may, on notice and after hearing, be charged with criminal contempt.

(m) Discipline by other jurisdictions

(i) Reciprocal discipline

- (A) On receipt of written notice that another jurisdiction entered an order of discipline against an attorney admitted to practice in this Court, the Chief Judge shall enter an order imposing the same discipline, effective as of the date that the discipline was effective in the other jurisdiction. If the discipline imposed in the other jurisdiction has been stayed there, the Court shall defer reciprocal discipline until the stay expires.
- (B) When this Court enters an order of discipline against an attorney, the attorney shall provide to the Clerk a list of all other jurisdictions in which the attorney is admitted to practice.

(ii) Application to modify reciprocal discipline

- (A) Within 30 days after the effective date of the order of discipline in this Court, the attorney may apply to the Chief Judge for modification or vacation of the discipline.
- (B) The Chief Judge shall modify or vacate the discipline if, on the record supporting the order of discipline in the other jurisdiction, the attorney demonstrates or the Chief Judge finds that it clearly appears that:
 - (1) the procedure in the other jurisdiction constituted a deprivation of due process;
 - (2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not accept as final the conclusion on that subject;
 - (3) imposing the same discipline in this Court would result in grave injustice; or
 - (4) the misconduct warrants substantially different discipline.

If the Chief Judge determines that any of these grounds exist, the Chief Judge shall

order other appropriate discipline or no discipline.

(iii) Reinstatement after expiration of discipline

- (A) An attorney may apply for reinstatement by filing an affidavit of reinstatement stating that the jurisdiction that entered the underlying order of discipline has reinstated the attorney. The Chief Judge shall assign such applications to a panel of three judicial officers consisting of at least one active district judge. The other members of the panel may include senior judges and magistrate judges. Any judge who initiated the request for discipline or before whom the allegation giving rise to request for discipline took place shall not be appointed to the panel. A decision of the majority of the three judge panel shall be final and binding.
- (B) The judicial officers assigned to the matter shall within 30 days after assignment schedule a hearing at which the attorney shall have the burden of demonstrating by clear and convincing evidence that:
 - (1) the attorney has complied with the orders of discipline of this Court and all other disciplinary authorities;
 - (2) the attorney has not practiced in this Court during the period of disbarment or suspension and has not practiced law contrary to any other order of discipline;
 - (3) the attorney has not engaged in any other professional misconduct since disbarment or suspension;
 - (4) the attorney has the moral qualifications, competency and learning in the law required for admission to practice law before this Court; and
 - (5) the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

The Court may condition reinstatement on payment of all or part of the costs of the proceedings in this Court and may impose any of the conditions of reinstatement imposed in the other jurisdiction, or such other conditions as are warranted.

- (C) An attorney shall not file an application for reinstatement under this Rule within one year following denial of such an application.

(iv) Obligation to report discipline

- (A) An attorney admitted to practice before this Court appearing or participating in a pending matter shall, on being subjected to an order of discipline, immediately inform the Clerk of the order of discipline.
- (B) An attorney admitted to practice before this Court shall, before appearing or participating in a matter in the Court after being subjected to an order of discipline that has not previously been reported to the Court, immediately inform the Clerk of the order of discipline.
- (C) An attorney knowingly violating this provision may be charged with criminal contempt.

(n) Resignation in other jurisdictions

- (i) If an attorney resigns from the bar of another court of the United States while an investigation into allegations of misconduct is pending:
 - (A) the attorney shall immediately and automatically be disbarred from this Court; and
 - (B) the attorney shall promptly inform the Clerk of the resignation. An attorney knowingly violating this notification provision may be charged with criminal contempt.
- (ii) On receipt of written notice that an attorney has resigned from the bar of another court of the United States or the bar of a state while an investigation into allegations of misconduct was pending, the Chief Judge shall enter an order disbarring the attorney, effective as of the date of resignation in the other jurisdiction.
- (iii) An attorney disbarred under this subsection may apply to the Chief Judge for modification or vacation of the disbarment pursuant to LCivR 83.1(m)(ii).
- (iv) An attorney disbarred under this subsection may be reinstated if the attorney is readmitted in the jurisdiction from which the attorney resigned and there has been a final disposition of the investigation into allegations of misconduct without an order of discipline.

(o) Service of papers - Service of papers on an attorney under this Rule may be by mail to the address of the attorney shown on the Court's roll of attorneys or the address in the most recent paper the attorney filed in a proceeding in this Court.

(p) Duties of the Clerk

- (i) On being informed that an attorney admitted to practice before this Court has been convicted of a crime, the Clerk shall determine whether the Court in which the conviction occurred sent a certificate of the conviction to this Court. If not, the Clerk shall promptly obtain a certificate and file it with the Court.
 - (ii) On being informed that another court or a state has entered an order of discipline against an attorney admitted to practice before this Court, the Clerk shall determine whether a certified copy of the order has been filed with this Court. If not, the Clerk shall promptly obtain a certified copy of the order and file it with the Court.
 - (iii) When this Court convicts an attorney of a crime or enters an order of discipline against an attorney, the Clerk shall promptly notify the National Discipline Data Bank operated by the American Bar Association and any other authority that licensed or authorized the attorney to practice.
- (q) Other authority - Nothing in this Rule abridges the Court's power to control proceedings before it, including the power to initiate proceedings for contempt under Fed. R. Crim. P. 42 or sanction or disqualify an attorney in a particular case.

57.2 Magistrate judges

- (a) Determination of nondispositive pretrial matters - 28 U.S.C. § 636(b)(1)(A) - A magistrate judge may hear and determine any procedural or discovery motion or other pretrial matters, other than motions to dismiss or quash an indictment or information made by a defendant and motions to suppress evidence.
- (b) Recommendations regarding case-dispositive motions - 28 U.S.C. § 636(b)(1)(B) - A magistrate judge may submit to a judge of the Court a report containing proposed findings of fact and recommendations for disposition by the judge of motions to dismiss or quash an indictment or information made against a defendant or motions to suppress evidence. A magistrate judge may determine any preliminary matters and conduct evidentiary hearing or other proceeding in connection with such recommendations.
- (c) Other duties - A magistrate judge is also authorized to:
 - (i) exercise all authority conferred upon United States magistrate judges by the Federal Rules of Criminal Procedure;
 - (ii) conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in cases;

- (iii) conduct all nondispositive proceedings in cases not triable to the magistrate judge, including initial appearances, bond hearings, detention hearings, hearings on motion to revoke bond, arraignments, the taking of not-guilty pleas and the entering of not-guilty pleas for defendants standing mute;
- (iv) impanel grand juries, and receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;
- (v) accept waivers of indictment and waivers of counsel;
- (vi) conduct voir dire and select petit juries to the extent allowed by law;
- (vii) accept petit jury verdicts in cases in the absence of a judge;
- (viii) conduct necessary proceedings leading to the potential revocation of probation;
- (ix) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties witnesses or evidence needed for investigations or for court proceedings;
- (x) order the exoneration or forfeiture of bonds;
- (xi) perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;
- (xii) issue summons, search warrants, orders or other process authorizing agents and officers of the Internal Revenue Service or other authorized persons to enter premises and to make such search as is necessary in order to levy and seize property pursuant to Section 6331 of the Internal Revenue Code or other applicable provision of law;
- (xiii) conduct proceedings in accordance with 26 U.S.C. §§ 7402(b) and 7604(b) regarding enforcement of Internal Revenue Service summonses;
- (xiv) conduct extradition proceedings in accordance with 18 U.S.C. § 3184;
- (xv) preside over the acceptance of guilty pleas in felony prosecutions in the circumstances allowed by LCrR 11; and
- (xvi) perform any additional duty not inconsistent with the Constitution and laws of the United States.

- (d) Appeal from judgments in misdemeanor cases - 18 U.S.C. § 3402 - A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal within ten (10) days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. If the case was previously assigned to a district judge, that judge shall hear any appeal from the decision of the magistrate judge; otherwise, the appeal shall be assigned to a district judge at random. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals.
- (e) Appeals from other orders of a magistrate judge - Appeals from any other decisions and orders of a magistrate judge not provided for in this rule should be taken as provided by governing statute, rule, or decisional law. Such appeals shall be taken in accordance with the procedures set forth in LCivR 72.3.
- (f) Any magistrate judge of this Court may exercise nondispositive jurisdiction and perform the duties authorized by this rule in any criminal case, without the necessity of an order of reference.

57.3 Miscellaneous

- (a) Amendment - These rules may be amended by a majority vote of the judges of this district in conformity with Rule 57 of the Federal Rules of Criminal Procedure.
- (b) Probation office - No employee of the U.S. Probation Office shall, except as required by law, disclose to any person or organization any information obtained or maintained pursuant to official duties. Any order, subpoena or other demand for the testimony of a probation officer or the official records of the Probation Office must be made in accordance with the procedures set forth in the applicable Regulations of the Judicial Conference of the United States. Whenever a probation officer of this Court is served with an order, subpoena or other demand for testimony or the production of confidential presentence or probation records, the probation officer must not provide testimony or access to official records without the prior written approval of the Chief Probation Officer. Except when the request is made by a federal or state probation or parole officer, the Chief Probation Officer must consult with the Chief Judge of this Court regarding the proper response to the order, subpoena, or other demand. This rule does not apply to officers' testimony before this Court.
- (c) Bonds and sureties - In all proceedings the Clerk shall accept as surety upon bonds and other undertakings a surety company approved by the United States Department of Treasury, cash or an individual personal surety residing within the district. The Clerk shall maintain a list of approved surety companies. Any personal surety must qualify as the owner of real estate within this district of the full net value of twice the face amount of the bond. Attorneys or other officers of this Court shall not serve as sureties. This rule

shall apply to supersedeas bonds and any other bonds required by law.

- (d) Appearance - An attorney appears by filing any pleading or other paper or by acknowledging in court that the attorney acts in the proceeding on behalf of a party. The appearance of an attorney is deemed to be the appearance of the law firm. Any attorney in the firm may be required by the Court to conduct a court-ordered conference or trial. Withdrawal of appearance may be accomplished only by leave of court.
- (e) Courthouse conduct
 - (i) Solicitation - Solicitation of business relating to bail bonds or to employment as counsel is prohibited in the courthouse.
 - (ii) Loitering - Loitering in or about the rooms or corridors of the courthouse is prohibited. Any behavior, group or individual, which impedes or disrupts the orderly conduct of the business of the Court is prohibited.
 - (iii) Signs - Cards, signs, placards, or banners shall not be brought into any of the courtrooms or hallways leading to courtrooms or on any floor in which courtrooms are located.
 - (iv) Enforcement - The United States Marshal, deputy marshals, and the authorized employees of the courthouse shall enforce this rule by ejecting violators from the courthouse or by causing them to appear before one of the judges of this Court for a hearing and for imposition of such punishment as the Court may deem proper.
 - (v) Photography and recording - The taking of photographs in any office, courtroom or its environs in connection with any judicial proceedings, the broadcast of judicial proceedings by radio, television or other means, or the audio recording of judicial proceedings are prohibited, except that the judicial officer in whose courtroom the proceedings occur may authorize: (1) the use of electronic or photographic means for the preservation or presentation of evidence; and (2) the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings.
- (f) Other matters - All other matters scheduled before a judge shall be scheduled by the judge's case manager, who shall notify all parties or counsel of scheduled dates and the purpose of all court appearances.
- (g) Writs of habeas corpus - All writs of habeas corpus ad prosequendum or testificandum for an individual shall, in addition to stating a specific date and time, include the following phrase: "and at such other times and dates as the Court may decree." Further, every effort shall be made to allow ten (10) working days after service prior to the required

appearance.

- (h) Suppression orders - For good cause shown, any party may obtain a protective order for the suppression of any action or of any pleading or other paper. Upon the entry of a suppression order, the Clerk shall prevent all persons, except those designated by the Court, from having access to the suppressed material.
- (i) Payment to court reporters - All parties, except defendants represented by CJA counsel, ordering a transcript must pay in advance by cash or certified check unless the court reporter agrees to other arrangements.

Local Criminal Rule 58. Misdemeanors; petty offenses and collateral forfeitures

58.1 Disposition of misdemeanor cases - 18 U.S.C. § 3401 - Each magistrate judge of this Court is empowered to exercise all jurisdiction conferred by 18 U.S.C. § 3401, including jurisdiction to:

- (a) try persons accused of, and sentence persons convicted of, misdemeanors in this District, after receiving such consent as may be required by 18 U.S.C. § 3401;
- (b) direct the probation service of the Court to conduct a presentence investigation in such misdemeanor case;
- (c) conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States; and
- (d) conduct all post judgment proceedings, including petitions to revoke or modify probation or supervised release, for any misdemeanor defendant who was originally sentenced by a magistrate judge.

58.2 Petty offenses and collateral forfeitures

- (a) Posting collateral in lieu of appearance - A person who is charged with a violation of a Federal Wildlife Act, parking regulations governing the Federal Building, National Forest Offenses, Conduct on Postal Service Property, Violation of Law on Military Property or any other petty offense as defined in 18 U.S.C. § 1(3), may, in lieu of appearance, post collateral in the amount indicated for the offense, waive appearance before a United States magistrate judge, and consent to the forfeiture of collateral to the United States. The posting of said collateral shall signify that the offender does not contest the charge or request a hearing before the designated United States magistrate judge. If the collateral is forfeited, such action shall be tantamount to a finding of guilty. Collateral will be permitted only for those offenses specifically authorized by the Court in separate orders. There shall be maintained in the office of the Clerk and with each United States magistrate judge a current list of the petty offenses and collateral applicable thereto which the Court has established as collateral forfeiture offenses.
- (b) Failure to post and forfeit collateral - If a person charged with an offense under this rule fails to post and forfeit collateral, any punishment, including fine, imprisonment or probation, may be imposed within the limits established by law upon conviction or after trial.
- (c) Aggravated offenses - If, within the discretion of the law enforcement officer, the offense is of an aggravated nature, the law enforcement officer may require appearance, and any punishment including fine, imprisonment or probation, may be imposed within the limits

established by law upon conviction or after trial.

- (d) Appearance required - Nothing contained in this rule shall prohibit law enforcement officers from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a United States magistrate judge or, upon arrest, taking the person immediately before a United States magistrate judge.